

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

BARRY V. SUTPHIN,

Plaintiff,

v.

Civil Action No.3:07-cv-171

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

Defendant.

**REPORT AND RECOMMENDATION PLAINTIFF'S APPLICATION TO PROCEED  
IN FORMA PAUPERIS BE DENIED**

On December 28, 2007, Barry Sutphin, ["Plaintiff"], filed a complaint under 42 U.S.C. § 405(g) and an Application for Leave to Proceed in forma pauperis. On February 19, 2008, the Court Ordered Plaintiff to complete the District's new IFP form. Plaintiff filed the completed form on March 31, 2008.

Plaintiff's application states his average monthly income during the past twelve months was \$2,772, in the form of disability payments. His application states his spouse's average monthly income during the past twelve months was \$1,000. His application reveals he owns a 1986 Chevy Monte Carlo, and a Mercury Cougar valued at \$1000. Plaintiff's monthly expenses total \$2937 and his wife's monthly expenses total \$1187.00. Plaintiff has enough household income to pay for the filing fee.

Accordingly, it is recommended Plaintiff's December 28, 2007 Application to Proceed in forma pauperis be **DENIED**, and Plaintiff be ordered to pay the full filing fee. Plaintiff should also be warned that the failure to pay the full filing fee within the time allowed by the Court will

result in the dismissal of his complaint.

Plaintiff may file, within ten (10) days from the date of this Report and Recommendation, with the Clerk of Court, written objections identifying those portions of the recommendation to which objection is made, and the basis for such objections. A copy of such objections should also be submitted to the District Court Judge of Record. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Report and Recommendation to the plaintiff and counsel of record, as applicable.

DATED: April 14, 2008

/s/ James E. Seibert  
JAMES E. SEIBERT  
UNITED STATES MAGISTRATE JUDGE